APPENDIX A

INTERPRETATIVE BULLETIN NO. 11—SEAMEN EXEMPTION

The Scope and Applicability of the Exemption Provided by Section 13 (a) (3) of the Fair Labor Standards Act of 1938. July 1943.[1] United States Department of Labor, Wage and Hour and Public Contracts Divisions, Office of the Administrator.

1. Section 13 (a) (3) of the act provides an exemption from the minimum wage provisions of section 6 and the maximum hours provisions of section 7, as follows:

> The provisions of sections 6 and 7 shall not apply with respect to * * * any employee employed as a seaman * * *.

2. The provisions of sections 6 and 7 of the act apply only to "employees * * * engaged in (interstate) commerce or in the production of goods for (interstate) commerce." See Interpretative Bulletins Nos. 1 and 5. This bulletin will not deal with the question as to which "seamen" are so engaged, but will be directed solely to the scope of the exemption in section 13 (a) (3) This bulletin is intended to indicate the construction of this section which will guide the Administrator in the performance of his adminis-

[1] Originally issued July 1939. Paragraph 6 revised July 1943.

trative duties unless directed otherwise by the authoritative ruling of the courts, or unless he shall subsequently decide that his prior interpretation is incorrect.

3. An employee will ordinarily be regarded as "employed as a seaman" if he performs, as master or subject to the authority, direction, and control of the master aboard a vessel, service which is rendered primarily as an aid in the operation of such vessel as a means of transportation, provided he performs no substantial amount of work of a different character. In our opinion, this exemption extends to employees performing such service on vessels navigating inland waters as well as on ocean-going and coastwise vessels.

4. The exemption extends to members of the crew such as sailors, engineers, radio operators, firemen, pursers, surgeons, cooks, and stewards if, as is the usual case, their service is of the type described in the preceding paragraph. However, concessionaires and their employees aboard a vessel ordinarily do not perform service subject to the authority, direction, and control of the master of the vessel except incidentally and do not come within the exemption under discussion.

5. The exemption does not extend to employees working aboard vessels whose service is not rendered primarily as an aid in the operation of the vessel as a means of transportation. Thus employees on floating equipment who are engaged in the construction of docks, levees, revetments, or other structures, and employees engaged in dredging operations or in the digging or processing of

sand, gravel, or other materials are not employed as "seamen." For the same and other reasons, stevedores and longshoremen are not regarded as "seamen." Similarly, stevedores or roustabouts traveling aboard a vessel from port to port whose principal duties require them to load and unload the vessel in port would not themselves come within the exemption even though during the voyage they may perform from time to time certain services of the same type as those rendered by other employees who would be regarded as seamen under the act. However, an employee employed as a seaman would not be outside the exemption simply because, as an incident to that employment, he assists in the loading or unloading of baggage or freight at the beginning or end of a voyage.

6. Barge tenders on non-self-propelled barges who perform the normal duties of their occupation, such as attending to the lines and anchors, putting out running and mooring lines, pumping out bilge water, and other similar activities necessary and usual to the navigation of barges, are considered seamen within the exemption unless they do a substantial amount of nonexempt work. Loading and unloading and activities relative thereto will be considered nonexempt work. Employees on seagoing barges would also seem to be employed as seamen.

7. Various situations are presented with respect to employees rendering watchman or similar service aboard a vessel in port. Where such services are rendered by members of the crew during a temporary stay in port or during a brief lay-up for minor repairs such employees would be within

the exemption. Where the vessel is laid up for a considerable period members of the crew rendering watchman or similar service aboard the vessel would not appear to be within the exemption because their services are not rendered primarily as an aid in the operation of the vessel as a means of transportation. Furthermore, employees who are furnished by independent contractors to perform watchman or similar service aboard a vessel while in port would not be employed as "seamen," regardless of the period of time the vessel is in port, since their services are not of the type described in paragraph 3 above. The same considerations would apply in the case of a temporary or skeleton crew hired to maintain the vessel while in port so that the regular crew may be granted shore leave.

8. Section 13 (a) (5), which provides an exemption from both the wage-and-hour provisions for employees engaged in certain operations in the sea-food and fishery industry, is discussed in Interpretative Bulletin No. 12. In addition, attention is directed to section 13 (b) (2) of the act, which provides an exemption from the maximum hour provisions for "any employee of an employer subject to the provisions of part I of the Interstate Commerce Act."

APPENDIX B

The following are excerpts from the statement on the seamen's exemption made by Ralph Emerson, legislative representative of the National Maritime Union, in the hearings on the Fair Labor Standards Act before the Joint Congressional Committees (Joint Hearings before Senate Committee on Education and Labor and House Committee on Labor on S. 2475 and H. R. 7200, 75th Cong., 1st Sess., pp. 544–549):

> The CHAIRMAN. Mr. Emerson, we have you listed as the legislative representative of the National Maritime Union.
>
> Mr. EMERSON. Yes, sir.
>
> The CHAIRMAN. All right, you may proceed.
>
> Mr. EMERSON. Mr. Chairman and gentlemen, my name is Ralph Emerson. I am the legislative representative of the National Maritime Union of America, comprising a membership of over 50,000 merchant seamen of the Atlantic and Gulf coasts.
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> I am also appearing here on behalf of the American Radio Telegraphists Association.
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> While there is no doubt in our minds that the intent of the bill is to raise labor standards to a fair level, and while it is also the intent of this bill to raise those standards among workers in mills, factories, and other branches of industry

which could be classed as productive, we feel that in a general interpretation of the whole bill that the way has been left open for the proposed Labor Standards Board to have jurisdiction over those classes of workers who are engaged in transportation. While this may not have an unfavorable effect upon the workers engaged in transportation by water, we feel that it may conflict with the laws now in effect regarding the jurisdiction of the Government machinery now set up to handle these problems.

* * * * *

Representative THOMAS. Does the Maritime Act attempt in any way to regulate hours and wages?

Mr. EMERSON. It is a small section of the act that refers to the Maritime Commission's jurisdiction over merchant seamen. This is from the Merchant Marine Act of 1936:

"The Commission is authorized and directed to investigate the employment and wage conditions in ocean-going shipping and, after making such investigation and after appropriate hearings to incorporate in the contracts authorized under titles VI and VII of this act minimum-manning scales and minimum-wage scales and reasonable working conditions for all officers and crews employed on all types of vessels receiving an operating-differential subsidy."

Representative THOMAS. Thank you.

The CHAIRMAN. I did not quite get the recommendation with reference to that. Would your organization prefer to continue under the Maritime Commission rather than to be included in this law? Have your seamen any position on that?

Mr. EMERSON. The position is—some people might say we want our cake and we want to eat it at the same time because while we want to go along under the jurisdiction of the Maritime Commission we feel, however, if the Labor Standards Board established a higher standard, then we would like to get any benefits which might accrue from this, although we feel that the Maritime Commission is going to do a good job as regards the merchant marine.

Representative CONNERY. In other words, you want double protection.

Mr. EMERSON. This is simply a protective clause; yes, sir.

As this newly formed Maritime Commission has jurisdiction, at present, over seamen in regard to wages, working conditions, and manning scales on subsidized merchant ships, and as we have every faith in the ability and competency of the Commission to handle our affairs, we feel that for the present time that that jurisdiction should not be hampered or impaired by any legislation that would be conflicting. However, we do not care to isolate ourselves from any benefits which could be accrued by this bill. As it is only in the recent past that the seamen, through organized efforts, have managed to have their standards of wages and living conditions raised, we feel that on page 12, part 2, section 4, paragraph (c) that caution should be observed by this committee in giving the proposed board the power to lower labor standards so that in no case should those standards be lowered to an extent that would deprive us of the gains we have already made. In fact, the seamen feel that any revision of wage scales for the maritime workers for some time to

come should be upward as we have long been amongst that class of workers who were underpaid and overworked.

Now, I would like to say something in regard to the maximum workweek. Under the best of union conditions in the maritime industry as affecting the seamen it is impossible at the present time for us to work less than 56 hours a week. At sea we cannot stop work and just say, "Well, this is a holiday," because we have to keep on working at the rate of an 8-hour day, 7 days a week, and that certainly makes 56 hours, but with the minimum of even 40 hours I think satisfactory arrangement could be made whereby the other extra 16 hours could be considered as overtime, and with the wages of the maritime workers at the low standards, as they have always been, I do not think we would be getting any too much money in regard to wages, because we have always been underpaid.

As I say, it has only been recently, in the last year or two, that we have started to raise our standards. We still feel, as regards the seamen, that they are working under substandard labor conditions, because our wages certainly do not compare with the average mechanic or shore worker, up to now.

* * * * *

Now, on page 19, lines 14 to 17, inclusive, it states:

"Deductions for board, lodging, and other facilities furnished by the employer if the nature of the work is such that the employer is obliged to furnish and the employee to accept such facilities."

* * * * *

As I say, we are in a position where we have to accept board and lodging, and an interpretation of this clause here gives the employer in the maritime industry the right to deduct for board and lodging.

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U. S. GOVERNMENT PRINTING OFFICE: 1949

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